

From: "Mitchell Berner" <mitchellberner@public-solutions.com>
To: "Katherine Hunt" <khunt@sanidiego.gov>
Date: 3/6/2006 2:44:36 PM
Subject: My Suggested Revisions to the Purpose and Intent

Dear Katherine and Stacey,

Attached is an MS Word document that contains my suggested revisions to the "Purpose and Intent" document that Katherine emailed earlier today.

I will be attending the Ethics Commission meeting, and would ask if you can please distribute the printed MS Word document attached to the Commissioners. The clear language as I've attempted to revise it follows below:

Purpose and Intent

It is the purpose and intent of the City Council of the City of San Diego in enacting this Division to ensure that the citizens of the City of San Diego have access to information about those who seek to influence decisions of City government through the use of professional lobbyists; can know the identity of those lobbyists engaged to influence decisions; to establish clear and unambiguous registration and disclosure requirements for lobbyists in order to provide the public with relevant information regarding the engagement of lobbyists; to prohibit the exertion of improper influence over City Officials or placing City Officials under perceived obligations to themselves or their clients; to avoid the appearance of or possible corruption created on behalf of private interests; to regulate lobbying activities in a manner that does not discourage or prohibit the exercise of constitutional rights; to help reinforce public trust in the integrity of local government; and to ensure that this Division is vigorously enforced.

With my thanks.

Mitchell Berner
President
Public Solutions
402 West Broadway, Suite 1050
San Diego, CA 92101
Phone: (619) 501-3660
Fax: (619) 501-3667
Cell: (619) 981-0408
MitchellBerner@Public-Solutions.com
www.Public-Solutions.com

CC: "Stacey Fulhorst" <sfulhorst@sanidiego.gov>

Purpose and Intent

It is the purpose and intent of the City Council of the City of San Diego in enacting this Division to ensure that the citizens of the City of San Diego have access to information about those ~~know the identity of who [private] interests that seek attempt to influence~~ decisions of City government through the use of professional paid lobbyists; can know the identity of those ~~and the methods employed by lobbyists engaged to achieve such influence decisions;~~ to establish clear and unambiguous registration and disclosure requirements for lobbyists in order to provide the public with relevant information regarding the engagement financing of lobbyists; ~~and the full range of lobbying activities;~~ to prohibit the registered lobbyists ~~from exertion of~~ an improper influence over City Officials or placing City Officials under personal perceived obligations to themselves or their clients; to ~~avoid corruption and avoid~~ the appearance of or possible corruption created by ~~lobbying activities~~ on behalf of private interests; to regulate lobbying activities in a manner that does not discourage or prohibit the exercise of constitutional rights; to help reinforce public trust in the integrity of local government; and to ensure that this Division is vigorously enforced.

Mitchell Berner

President

Public Solutions

402 West Broadway, Suite 1050

San Diego, CA 92101

Phone: (619) 501-3660

Fax: (619) 501-3667

Cell: (619) 981-0408

MitchellBerner@Public-Solutions.com

www.Public-Solutions.com

THE SUTTON LAW FIRM

March 7, 2006

ETHICS COMMISSION
2006 MAR -8 AM 8:05
CITY OF SAN DIEGOVIA FAX ONLY

Ms. Stacey Fulhorst
San Diego Ethics Commission
1010 Second Ave., Ste. 1530
San Diego, CA 92101

RE: Lobbying Ordinance Exemptions

Dear Stacey:

On behalf of the San Diego Public Affairs Working Group ("Working Group"), we submit the following recommendations for consideration by the Ethics Commission while discussing possible exemptions from the City's lobbying law:

1. Land Use Decisions. City law establishes five different processes for land use decisions. Certain ministerial and administrative decisions, such as building or demolition permits (referred to in City law as "Process 1" decisions), are made by staff, while other more complex decisions, such as conditional use permits, require Planning Commission (Process 4) or City Council (Process 5) approval.¹ The framework in the current version of the lobbying ordinance defines "municipal decision" to include all land use decisions made pursuant to Processes 2-5 and to exclude decisions made pursuant to Process 1.

We recommend that the new lobbying law cover all land use decisions which are actually reviewed by the Planning Commission or City Council, while exempting all decisions made by staff; i.e., that the law cover all Process 4 and 5 decisions, exempt all Process 1 decisions, and only cover Process 2 and 3 decisions if they actually come before either the Planning Commission or the City Council, whether by an appeal or by the operation of the particular process. In short, real estate developers simply do not retain professional lobbyists to work on land use matters unless they are being reviewed by the Planning Commission or Council; the developer's architects, engineers and planners instead work on the plethora of decisions made by the staff of the Planning Department or Development Services Department regarding a particular project. This exemption would therefore focus on the individuals and activities which seem to be of most concern to the Commission, while exempting the dozens of more routine land use decisions which are part of every real estate project.

¹Section 112.0501 of the Municipal Code outlines these land use decision processes.
(Copy enclosed.)

150 Post Street, Suite 405 ■ San Francisco, CA 94108
Tel: 415/732-7700 ■ Fax: 415/732-7701 ■ www.campaignlawyers.com

Ms. Stacey Fulhorst

March 7, 2006

Page 2

Although not called out in the staff's chart of exemptions in the lobbying laws of other jurisdictions, almost all lobbying laws in the state contain some type of exemption for land use matters. (See, e.g., S. F. Camp. & Govt. Conduct Code section 2.105(d)(P) [exempting building permits, parcel maps, etc., while covering appeals which come before the City's land use bodies (i.e., the Board of Appeals or Planning Commission) or the Board of Supervisors]; L.A. City Muni. Code section 48.02 [exempting "Preparation and compilation of any radius map, vicinity map, plot plan, site plan, property owners or tenants list, abutting property owners list, photographs of property, proof of ownership or copy of lease, or neighbor signatures required to be submitted to the City Planning Department."]; L.A. County Code section 2.160.010(D)(3) [exempting "quasi-judicial decisions which are reviewable by a court pursuant to the Code of Civil Procedure section 1094.5" (e.g., conditional use permits, variances and subdivision maps), and Lobbying Rule 2.7 [activities which are "limited to compliance with formal County requirements for approval or granting of a County contract, permit, grant, license or franchise"]; FPPC Reg. 18202(a) [exempting all state permits and licenses]; copies enclosed.)

2. Technical Assistance. We recommend that the new law exempt individuals who provide "technical" data or analysis to City officials, or who are brought in by a registered lobbyist for their particular expertise on an issue. Under current law, a geologist who meets with Planning Department staff on behalf of a developer to explain soil and grading issues in an Environmental Impact Report, or the engineer who meets with the staff of the Chief Operating Officer to explain the technical specifications of the product which his or her company is attempting to sell to the City, or the accountant who provides back-up documentation for the financial statements which a company submitted with its response to an RFP, all risk qualifying as lobbyists -- even though they are merely helping City officials better understand some technical aspect of the project or proposal.²

3. Public Officials Exemption. We recommend extending the current exemption for public officials or employees acting in their official capacities to include members of "advisory" committees established by the City to provide advice and recommendations to City boards, commissions, agencies, etc. The City typically asks experts in a particular field or representatives of a particular stakeholder group to sit on these advisory bodies; they should not have to register as a lobbyist because they are in essence performing a public function, and because they are doing so at the explicit request of City officials.

²Both the State and several local jurisdictions exempt experts from their lobbying laws. (See, e.g., FPPC Reg. 18239 [lobbying "does not include any request for or provision of purely technical data or analysis to an administrative agency"]; S. D. County Code section 23.103(5) [registration not required by any person retained to provide technical information]; S.F. Camp. & Govt. Conduct Code section 2.105(d)(L) [expert employed or retained to provide information to a City official is not a lobbyist]; copies enclosed.)

Ms. Stacey Fulhorst
March 7, 2006
Page 3

4. Contract Administration.³ We recommend that the law explicitly clarify that interacting with City officials in connection with administering or complying with an existing contract is exempt, not just negotiating the terms of a contract after it has been awarded. For example, individuals and entities who have already been awarded a City contract should not have to register as a lobbyist when they talk to their City contacts about implementation or interpretation of existing terms of their contracts, insurance and bonding, contract performance, disputes, audits, subcontracting, request for in-scope changes orders, etc. (See, e.g. S.F. Camp. & Govt. Conduct Code section 2.105(d)(O) [explicitly exempting contract administration]; copy enclosed.) This exemption would mirror similar language in the City's current exemption for "administration, implementation or interpretation" of collective bargaining agreements.

5. Collective Bargaining Exemption. We recommend that the Commission clarify that the exemption for collective bargaining agreements with employee organizations does not include attempts by employee organizations to influence other municipal decisions, such as ordinances pending before the Council, or other City contracts.

6. Miscellaneous Exemptions. Finally, we support maintaining the exemptions in the current City law for responding to RFPs and RFQs, requesting advice or information, litigation with or against the City, ministerial actions (including requests for meetings, status of an action, etc.), appearing at public hearings and submitting written statements which become part of the public record, responding to City enforcement actions, audits and similar matters and responding to subpoenas and official requests.

Again, we look forward to working with staff and Commissioners throughout this process. We will follow-up this letter with a phone call later this week to discuss these recommendations.

Sincerely,



James R. Sutton

Enclosures
JRS/lc
#1193.01

³Although not included in staff's chart of exemptions, we would like to point out that state law explicitly exempts all contract decisions. (FPPC Reg. 18202(a).)

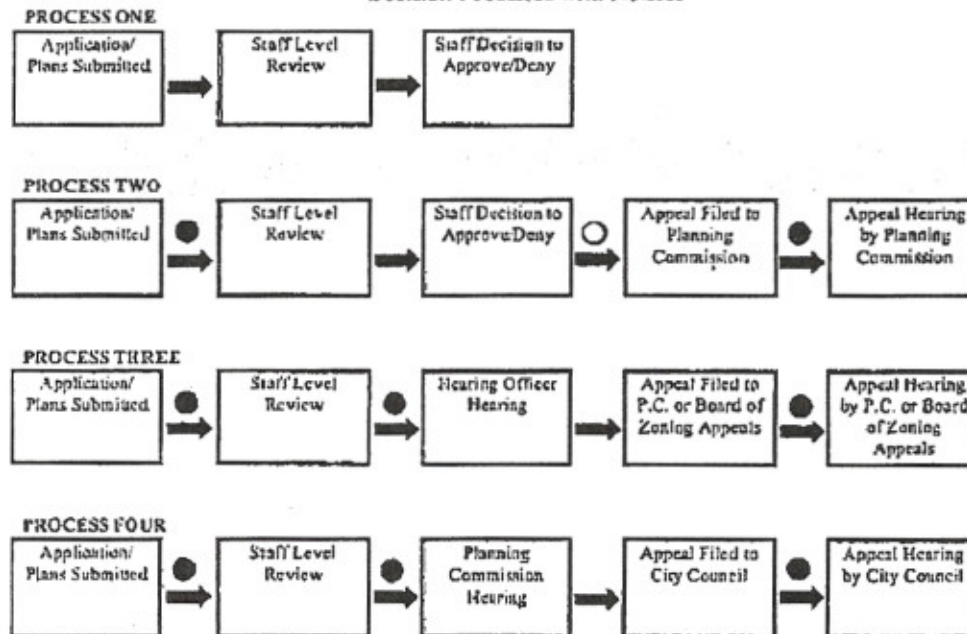
Article 2: Required Steps in Processing

Division 5: Decision Process

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

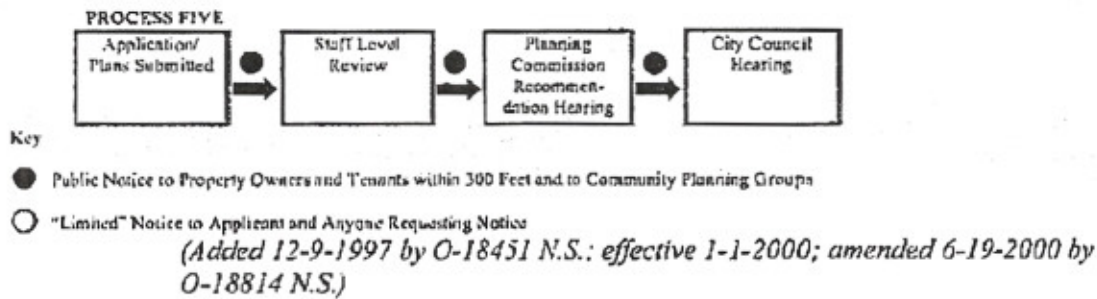
§ 112.0501 Overview of Decision Process

Applications for permits, maps, or other matters shall be acted upon in accordance with one of the five decision processes established in this division and depicted on Diagram 112-05A. The subject matter of the *development* application determines the process that shall be followed for each application. The provisions of Chapter 12 that pertain to each permit, map, or other matter describe the decision process in more detail. Diagram 112-05A is provided for convenience of reference only and does not define, describe, or limit the scope, meaning, or intent of any provision of the Land Development Code. This diagram describes the City of San Diego's processes only and does not describe other decision processes that may be required by other agencies, such as the State Coastal Commission.

Diagram 112-05A
Decision Processes with Notices

San Diego Municipal Code
(6-2000)

Chapter 11: Land Development Procedures



§112.0502 Process One

An application for a permit, map, or other matter acted upon in accordance with Process One may be approved or denied by a staff person designated by the City Manager pursuant to Section 111.0205. A public hearing will not be held.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§112.0503 Process Two

An application for a permit or other matter acted upon in accordance with Process Two may be initially approved, conditionally approved, or denied by a staff person designated by the City Manager pursuant to Section 111.0205. A public hearing will not be held. An appeal hearing is available upon written request in accordance with Section 112.0504. A Process Two decision shall be made in the following manner.

- (a) **Notice.** The designated staff person shall mail a Notice of Future Decision to the persons identified in Section 112.0302(b). Persons who wish to receive notice of the approval or denial of the application may request this information from the staff person. The request must be received no later than 10 *business days* after the date on which the Notice of Future Decision is mailed.
- (b) **Decision Process.** The designated staff person may approve, conditionally approve, or deny the application without a public hearing. The decision shall be made no less than 11 *business days* after the date on which the Notice of Future Decision is mailed to allow for sufficient time for public comment.

or payment. "Activity expenses" include gifts, honoraria, consulting fees, salaries, and any other form of economic consideration totaling more than \$30 in value in a consecutive three-month period, but do not include political contributions.

(b) "Candidate" means a person who has taken affirmative action to seek nomination or election to local office, a local officeholder who has taken affirmative action to seek nomination or election to any elective office, or a local officeholder who is the subject of a recall election.

(c) "Client" means the person for whose benefit lobbyist services are performed by a contract lobbyist.

(d) "Contact" means communicate, orally or in writing, including communication through an agent, associate or employee, for the purpose of influencing or attempting to influence local legislative or administrative action.

(1) The following activities are not "contracts" within the meaning of this Chapter.

(A) A public official acting in the public official's official capacity. For purposes of this subsection, "public official" includes an elected or appointed official or employee, or officially designated representative of the United States, the State of California, or any political subdivision thereof. For purposes of this subsection, "public official" also includes persons appointed to serve on City and County advisory committees and City and County task forces;

(B) A representative of a news media organization gathering news and information or disseminating the same to the public, even if the organization, in the ordinary course of business, publishes news items, editorials or other commentary, or paid advertisements, that urge action upon local legislative or administrative matters;

(C) A person providing oral or written testimony that becomes part of the record of a public hearing; provided, however, that if the person making the appearance or providing testimony has already qualified as a lobbyist under this Chapter and is appearing or testifying on behalf of a client, the lobbyist's testimony shall identify the client on whose behalf the lobbyist is appearing or testifying;

(D) A person acting on behalf of others in the performance of a duty or service, which duty or service lawfully can be performed for such other only by an attorney or an architect licensed to practice in the State of California, and including any communication by an attorney in connection with litigation involving the City and County or a claim filed pursuant to Administrative Code Section 10.20-1 *et seq.*;

(E) A person making a speech or producing any Chapter, publication or other material that is distributed and made available to the public, through radio, television, cable television, or other medium of mass communication;

(F) A person providing written information in response to an oral or written request made by an officer of the City and County, provided that the written information is a public record available for public review;

(G) A person providing oral or written information pursuant to a subpoena, or otherwise compelled by law or regulation;

(H) A person providing oral or written information in response to a request for proposals, request for qualifications, or other similar request, provided that the information is directed to the department or official specifically designated in the request to receive such information;

(I) A person submitting a written petition for local legislative or administrative action, provided that the petition is a public record available for public review;

(J) A person making an oral or written request for a meeting, for the status of an action, or any other similar administrative request, if the request does not include an attempt to influence local legislative or administrative action;

(K) A person appearing before an officer of the City and County pursuant to any procedure established by law or regulation for levying an assessment against real property for the construction or maintenance of an improvement;

(L) An expert employed or retained by a lobbyist registered under this Chapter to provide information to an officer of the City and County;

30A

Lobbying - Regulation of Lobbyists

Sec. 2.105.

(M) A person distributing to any officer of the City and County any regularly published newsletter or other periodical which is not primarily directed at influencing local legislative or administrative action;

(N) A person disseminating information or material to all or a significant segment of the person's employees or members;

(O) A person communicating in connection with the administration of an existing contract between the person and the City and County of San Francisco. For purposes of this Subsection, communication, "in connection with the administration of an existing contract" includes, but is not limited to, communication regarding: insurance and bonding; contract performance and/or default; requests for in-scope change orders; legislative mandates imposed on contractors by the City and County; payments and invoicing; personnel changes; prevailing wage verification; liquidated damages and other penalties for breach of contract; audits; assignments; and subcontracting. Communication "in connection with the administration of an existing contract" does not include communication regarding new contracts, or out-of-scope change orders; and

[Section 2.105 continues on page 31.]

(P) A person applying for, opposing or otherwise taking any position on a grading permit or a permit relating to the construction, alteration, demolition or moving of a building or to a person filing, opposing or otherwise taking a position on a parcel map or subdivision tract map; provided, however, that if a person qualifies as a lobbyist and that person takes or opposes an appeal or represents a person taking or opposing an appeal, pursuant to any procedure or authority provided by law from an administrative determination made with respect to such an application or map, that person shall be required to register as provided in Section 2.110 upon taking the appeal or filing opposition to it.

(e) "Economic consideration" means any payments, fees, reimbursement for expenses, gifts, or anything else of value.

(f) "Ethics Commission" means the San Francisco Ethics Commissioner or its designee.

(g) "Filer" means a person who qualifies as a lobbyist under Subsection (i) of this Section.

(h) "Gift" shall be defined as set forth in the Political Reform Act, Government Code Section 81000 *et seq.*, and the regulations adopted thereunder.

(i) "Lobbyist" means the following:

(1) Contract Lobbyist.

(A) "Contract lobbyist" means any person who contracts for economic consideration to contact any officer of the City and County of San Francisco on behalf of any other person, and who:

(i) Receives or becomes entitled to receive at least \$3,200 in economic consideration within any three consecutive calendar months in exchange for lobbyist services; or

(ii) Has at least 25 separate contacts with officers of the City and County within any two consecutive calendar months.

(B) For purposes of calculating whether a person has reached the income threshold set forth in (1)(A)(i) of this subsection, all economic consideration the person has received or become entitled to receive, during the three consecutive calendar months, from all clients in exchange for lobbyist services shall be combined.

(C) For purposes of calculating whether a person has reached the contacts threshold set forth in (1)(A)(ii) of this subsection, all contacts with officers

of the City and County that were made by the person during the two preceding calendar months on behalf of all clients shall be combined.

(2) Business and Organization Lobbyist.

(A) "Business and organization lobbyist" means any business or organization any of whose employees or members, as a regular part of their employment or duties, contact officers of the City and County of San Francisco on behalf of that business or organization, provided:

(i) The business or organization compensates its employees or members, at any amount, for their lobbyist services on its behalf; and

(ii) The compensated employees or members have a total of at least 25 separate contacts with officers of the City and County within any two consecutive calendar months. Contacts made by an employee or member who merely indicates his or her affiliation or identification with the business or organization, but who does not represent the official position of the business or organization shall not be included in this calculation.

(3) Expenditure Lobbyist.

(A) "Expenditure lobbyist" means any person who makes payments to influence local legislative or administrative action totaling \$3,200 or more in value within any three consecutive calendar months.

(B) The following shall not be included in calculating payments under (3)(A) of this Subsection: economic consideration paid to any person in exchange for lobbyist services; and dues payments, donations, and other economic consideration paid to any business and organization lobbyist or expenditure lobbyist, regardless of whether the economic consideration is used in whole or in part to influence local legislative or administrative action.

(4) Exemptions. No person shall qualify as a "lobbyist" within the meaning of this Chapter by reason of activities described in Subsection (d)(1) of Section 2.105.

(j) "Lobbyist services" means services rendered for the purpose of influencing or attempting to influence local legislative or administrative action, including but not limited to contacts with officers of the City and County of San Francisco. "Lobbyist services" shall not include activities described in Subsection (d)(1) of Section 2.105, other than Subsection (d)(1)(C) of Section 2.105.

Los Angeles Municipal Lobbying Ordinance

acquires the investment as compensation for his or her lobbying services or in contemplation of performing those services.

"Lobbyist employer" means an entity, other than a lobbying firm, that employs a lobbyist in-house to lobby on its behalf.

"Major filer" means any person who makes payments or incurs expenditures totaling \$5,000 or more during any calendar quarter for public relations, media relations, advertising, public outreach, research, investigation, reports, analyses, studies, or similar activities, for the purpose of attempting to influence action on any proposed or pending matter of municipal legislation, if these payments or expenditures are not required to be reported on a lobbyist or lobbying firm quarterly report. A "major filer" does not include a lobbyist, lobbyist employer, or lobbying firm. Expenditures and payments for regularly published newsletters or other routine communications between an organization and its members shall not be counted for the purpose of this definition.

"Municipal legislation" means any legislative or administrative matter proposed or pending before any agency (as defined in this Article), including but not limited to those involving the granting, denial, revocation, restriction or modification of a license, permit or entitlement for use (including all land use permits) if the Mayor, the City Council, any of its committees, any agency board, commission, committee, or general manager, or any agency officer or employee charged by law with holding a hearing and making a decision, is charged by law with making a final decision on the matter. However, "municipal legislation" does not include any of the following:

- (1) A request for advice or for an interpretation of laws, regulations, City approvals or policies, or a direct response to an enforcement proceeding with the City Ethics Commission.
- (2) Any ministerial action. An action is ministerial if it does not require the City official or employees involved to exercise discretion concerning any outcome or course of action.
- (3) Any action relating to the establishment, amendment, administration, implementation or interpretation of a collective bargaining agreement or memorandum of understanding between an agency and a recognized employee organization, or a proceeding before the Civil Service Commission or the Employee Relations Board. Further, it does not include management decisions as to the working conditions of represented employees that clearly relate to the terms of such collective bargaining agreement or memorandum of understanding. Nevertheless, A municipal legislation does include any action relating to collective bargaining taken by the City Council, any of its committees or members (including the staffs of such members), or by the Mayor or his or her office.
- (4) Preparation or compilation of any radius map, vicinity map, plot plan, site plan, property owners or tenants list, abutting property owners list, photographs of property, proof of ownership or copy of lease, or neighbor signatures required to be submitted to the City Planning Department.

L.A. City
Municipal
Code
section
48.02

"Person" means any individual, business entity, trust corporation association, committee, or any other organization or group of persons acting in concert.

"Solicit" means to ask, personally or through an agent, that another person make a contribution to an

L.A. County
Code section

2.160.010(0)(3)

D. "County lobbyist" means any individual who is employed, contracts or otherwise receives compensation, other than reimbursement for reasonable travel expenses, to communicate directly, or through agents, employees or subcontractors, with any county official for the purpose of influencing official action, if a substantial or regular portion of the activities for which he or she receives such compensation is for the purpose of influencing official action. Provided, however, a county lobbyist shall not include:

1. An elected or appointed public official or public employee when acting in his or her official capacity as an elected or appointed public official or public employee;
2. Any newspaper or other periodical of general circulation, book publisher, radio or television station (including any individual who owns, publishes, or is employed by any such newspaper or periodical, radio or television station) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge official action if such newspaper, periodical, book publisher, radio or television station or individual, engages in no further or other activities in connection with urging official action other than to appear before the board of supervisors or a county commission in support of or in opposition to such action; or
3. A person whose attempts to influence official action are limited solely to actions taken as an attorney or advocate representing a party to an administrative proceeding the decision of which is reviewable by a court pursuant to Code of Civil Procedure Section 1094.5

E. "County lobbying firm" means a business entity, including an individual county lobbyist, which receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of influencing official action on behalf of any other person, if either any partner, owner, officer or employee of the business entity is a county lobbyist, or a substantial or regular portion of the activities for which the business entity receives compensation is for the purpose of influencing official action. No business entity shall be considered a county lobbying firm by reason of activities described in subdivisions 1, 2 or 3 of subsection D of this section.

F. "County lobbyist employer" means a person or entity, other than a county lobbying firm, who, for economic consideration other than reimbursement for reasonable travel expenses, either employs one or more county lobbyists or contracts for the services of a county lobbyist or county lobbying firm, for the purpose of influencing official action.

G. "Activity expense" means any expense incurred or payment made by a lobbyist, lobbying firm, or lobbyist employer or arranged by a lobbyist or lobbying firm, which benefits in whole or in part any county official or a member of the immediate family of a county official, regardless of whether the expense or payment is reimbursed by the person on whose behalf the county lobbying services are performed. Activity expenses include gifts, honoraria, consulting fees, salaries, and any other form of compensation, but do not include campaign contributions.

H. "Campaign contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate

agent by a person who does not otherwise engage in direct communication for the purpose of influencing official County action.

2.5 Definition of County official. County official includes a member of the Board of Supervisors, the Sheriff, the Assessor, the District Attorney, a county commissioner, and any other county officer or employee whose duties are not primarily clerical or manual.

2.6 Definition of official County action. Official County action means the drafting, introduction, consideration, modification, enactment or defeat of any county ordinance or board of supervisors motion or resolution, or the granting or denial of any county contract, permit, grant, license or franchise.

2.7 Definition of influencing official County action. Influencing official County action means promoting, supporting, influencing, modifying, opposing or delaying any official action by any means, including but not limited to the provision or use of information, statistics, studies or analyses. Influencing official County action does not include actions strictly limited to compliance of formal County requirements for approval or granting of a county contract, permit, grant, license or franchise.

L.A. County
Lobbying
Rule
2.7



FAIR POLITICAL PRACTICES COMMISSION

SEARCH

CITE MAP

COMMISSION

PRESS CENTER

LIBRARY & PUBLICATIONS

FEEDBACK

FORMS

Regulations of the Fair Political Practices Commission

TITLE 2, DIVISION 6, CALIFORNIA CODE OF REGULATIONS

(Back to Regulations of the Fair Political Practices Commission)

18202. Quasi-Legislative Administrative Action

(a) A proceeding of a state agency is not a quasi-legislative proceeding for the purposes of Government Code Section 82002 if it is any of the following:

- (1) A proceeding to determine the rights or duties of a person under existing laws, regulations or policies.
- (2) A proceeding involving the issuance, amendment or revocation of a permit or license.
- (3) A proceeding to enforce compliance with existing law or to impose sanctions for violations of existing law.
- (4) A proceeding at which an action is taken involving the purchase or sale of property, goods or services by such agency.
- (5) A proceeding at which an action is taken which is ministerial in nature.
- (6) A proceeding at which an action is taken awarding a grant or contract.
- (7) A proceeding involving the issuance of a legal opinion.

Note: Authority cited: Section 83112, Gov. Code

Reference: Section 82002, Gov. Code

History.

- (1) New section filed 9-18-75; effective thirtieth day thereafter.
- (2) Amendment filed 11-10-83; effective thirtieth day thereafter.

- ▶ FPPC Home Page
- ▶ Commission
- ▶ Agendas
- ▶ Interested Persons' Meetings
- ▶ Candidates and Committees
- ▶ Lobbyists
- ▶ Restrictions on Government Officials and Employees
- ▶ Ethics Orientation for State Officials
- ▶ Conflicts of Interest / Form 700 / COI Codes
- ▶ Enforcement
- ▶ Audit Program
- ▶ Workshops & Seminars
- ▶ Legislation
- ▶ Litigation
- ▶ Mailing Lists
- ▶ Links
 - ▶ FPPC Media Center
 - ▶ Library and Publications
 - ▶ The Political Reform Act
 - ▶ Regulations of the Fair Political Practices Commission
 - ▶ Newly Adopted or Amended Regulations / Proposed Regulations
 - ▶ FPPC Opinions
 - ▶ FPPC Publications
 - ▶ Advice Summaries
 - ▶ FPPC Resolutions
 - ▶ Proposition 34 Archive
 - ▶ Internet Political Practices Phase 2
 - ▶ Forms & Manuals
 - ▶ Privacy





FAIR POLITICAL PRACTICES COMMISSION

SEARCH

SITE MAP

COMMISSION

PRESS CENTER

LIBRARY & PUBLICATIONS

FEEDBACK

FORMS

- ▶ FPPC Home Page
- ▶ Commission
- ▶ Agendas
- ▶ Interested Persons' Meetings
- ▶ Candidates and Committees
- ▶ Lobbyists
- ▶ Restrictions on Government Officials and Employees
- ▶ Ethics Orientation for State Officials
- ▶ Conflicts of Interest / Form 700 / COI Codes
- ▶ Enforcement
- ▶ Audit Program
- ▶ Workshops & Seminars
- ▶ Legislation
- ▶ Litigation
- ▶ Mailing Lists
- ▶ Links
 - ▶ FPPC Media Center
 - ▶ Library and Publications
 - ▶ The Political Reform Act
 - ▶ Regulations of the Fair Political Practices Commission
 - ▶ Newly Adopted or Amended Regulations / Proposed Regulations
 - ▶ FPPC Opinions
 - ▶ FPPC Publications
 - ▶ Advice Summaries
 - ▶ FPPC Resolutions
 - ▶ Proposition 34 Archive
 - ▶ Internet Political Practices Phase 2
 - ▶ Forms & Manuals
 - ▶ Privacy

Regulations of the Fair Political Practices Commission

TITLE 2, DIVISION 6, CALIFORNIA CODE OF REGULATIONS

(Back to Regulations of the Fair Political Practices Commission)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations.)

18239. Definition of Lobbyist.

(a) Introduction.

(1) If an individual engages in direct communication, other than administrative testimony, with a qualifying official for the purpose of influencing legislative or administrative action on behalf of any person other than his or her employer, apply Government Code section 82039 and subdivision (b) of this regulation to determine if the individual is a lobbyist.

(2) If an individual engages in direct communication, other than administrative testimony, with a qualifying official for the purpose of influencing legislative or administrative action *only* on behalf of his or her employer, apply Government Code section 82039 and subdivision (c) of this regulation to determine if the individual is a lobbyist.

(b) A lobbyist is an individual who receives or becomes entitled to receive \$2,000 or more in compensation in any calendar month for engaging in direct communication, other than administrative testimony, with one or more qualifying officials for the purpose of influencing legislative or administrative action.

(c) A lobbyist is an individual who spends one-third or more of the time, in any calendar month, for which he or she receives compensation from his or her employer, engaging in direct communication, other than administrative testimony, with one or more qualifying officials for the purpose of influencing legislative or administrative action.

(d) Definitions.

(1) "Administrative testimony" means either of the following:

(A) Influencing or attempting to influence administrative action by acting as counsel in, appearing as a witness in, or providing written submissions, including answers to inquiries, which become part of the record of any regulatory or administrative agency proceeding:

(i) Which is conducted as an open public hearing for which public notice is given;

(ii) Of which a record is created in a manner which makes possible the creation of a transcript; and

(iii) With respect to which full public access is provided to such record or transcript and to all written material which is submitted to become part of the record.

(B) Any communication made at a public hearing, public workshop, public forum, or included in the official record of any proceeding, as defined in Government Code section 82002(b) or (c), before the California Public Utilities Commission.

(2) "Compensation" means any economic consideration, other than reimbursement for reasonable travel expenses, i.e., expenses for transportation plus a reasonable sum for food and lodging.

(3) "Direct communication" means appearing as a witness before, talking to (either by

phone or in person), corresponding with, or answering questions or inquiries from, any qualifying official, either personally or through an agent who acts under one's direct supervision, control or direction.

(A) Direct communication does not include any request for or provision of purely technical data or analysis to an administrative agency by a person who does not otherwise engage in direct communication for the purpose of influencing legislative or administrative action.

(B) For the purpose of determining whether an individual qualifies as a lobbyist pursuant to subdivisions (b) or (c), an individual does not engage in "direct communication" when he or she meets or speaks with a qualifying official in the company of a registered lobbyist retained by the individual or individual's employer or by a bona fide trade association or membership organization of which the individual or individual's employer is a bona fide member.

(4) "Influencing legislative or administrative action" means communicating directly or taking any other action for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing any legislative or administrative action.

(5) "Qualifying official" means:

(A) Any elected state official;

(B) Any legislative official;

(C) Any appointed, elected, or statutory member or director of any state agency;

(D) Any staff member of any state agency who makes direct recommendations to the persons listed in subdivision (5)(C) of this subdivision, or who has decisionmaking authority concerning such recommendations.

NOTE: Authority cited: Section 83112, Government Code.
Reference: Section 82039, Government Code.

History

- (1) New Chapter 2 (Section 18239) filed 6/30/75 as an emergency; effective upon filing. Certificate of Compliance included.
- (2) Amendment of subsection (e) filed 9/18/75; effective thirtieth day thereafter.
- (3) Amendment filed 11/24/78; designated effective 1/1/79.
- (4) Amendment filed 8/27/81; effective thirtieth day thereafter.
- (5) Amendment filed 1/25/83; effective thirtieth day thereafter.
- (6) Amendment filed 5/7/84 as an emergency; effective upon filing. A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9/4/84.
- (7) Certificate of Compliance transmitted to OAL 7/17/84 and filed 8/21/84.
- (8) Amendment filed 3/15/94; effective upon filing.
- (9) Amendment filed 7/28/97; effective upon filing.
- (10) Amendment filed 6/17/02; effective 7/17/02.



(4) Any representative of an employee organization while acting pursuant to the Meyers-Milias-Brown Act or pursuant to a procedure established by the County in accordance with said Act, contacting an officer or employee of the County other than a member of a board or commission, or contacting a member of a board or commission who has been designated by such board or commission as its representative to meet with such representative of an employee organization.

S.D. County
Code
section
23.103

(5) Any person brought to a County officer or employee described in Section 23.102 by a person registered pursuant to this Chapter to provide technical or other information.

(6) Any person whose contacts with County officers or employees described in Section 23.102 is limited to routine sales discussions with the Director of Purchasing and Contracting for the purpose of selling goods or services to the County.

(Amended by Ord. No. 7400 (N.S.), effective 11-27-87; amended by Ord. No. 8993 (N.S.), effective 2-11-99)

SEC. 23.104. CONTENTS OF REGISTRATION.

(a) Any registration made pursuant to Section 23.102 shall be in writing, filed with the Clerk of the Board of Supervisors, signed by the registrant, or an authorized officer thereof, under penalty of perjury.

(b) The registration shall set forth the following information:

(1) Registrant's name.

(2) Registrant's business address.

(3) Name of the person, firm, corporation, or organization represented. If the registrant is employed by a company or firm that itself has been retained by a person, corporation, firm, or organization to obtain a County decision, to which the registrant has been assigned, the registrant shall disclose the names of both his immediate employer and the person, corporation, firm, or organization that has retained his immediate employer.

(4) A list of the elective County offices that the registrant will attempt to influence. The list shall include the Board of Supervisors in the event that the registrant will attempt to influence any member of the Board.

(Added by Ord. No. 4098 (N.S.), effective 5-31-73; amended by Ord. No. 8966 (N.S.), effective 10-20-98; amended by Ord. No. 9011 (N.S.), effective 4-15-99)

SEC. 23.105. NOTIFICATION OF REGISTRATION REQUIREMENT.

The Clerk of the Board of Supervisors shall issue, upon request of any County officer or employee described in Section 23.102 a "Notice of Registration Required" to any person believed by such County officer or employee to be required to register under Section 23.102. Any person who in good faith believes that he is not required to register under this Chapter shall not be deemed to have violated Section 23.102 if he registers within 10 days after receipt of notice from the Clerk of the

From: "Rebecca Michael" <RMichael@wertzmcdade.com>
To: "Katherine Hunt" <KHunt@sandiego.gov>
Date: 3/20/2006 11:17:17 AM
Subject: RE: Attached are three documents that have been prepared for discussion at the Ethics Commission's meeti discussion at the Ethics Commission's meeti

Hi Katherine. Thank you for your e-mail and attachments. I had wanted to attend this morning's meeting but family obligations got in the way.

I had questions and comments regarding several of staff's recommendations on the Activities Exempt From Lobbying chart and comments on the List of Unclassified and Classified City Positions:

1) The recommendation to "Maintain current exemption; narrow scope to eliminate City Council & staff from exemption." I assume "staff" is City Council staff. Is there a reason the Mayor and his staff is not listed?

2) "Expert employed by lobbyist to give info to City" I like staff's recommendation to consider a limited exemption for purely technical data as well as for architects, engineers, and geologists. We often have one or more of the consultants (architect, engineer, etc.) with us when we meet with staff to discuss issues relating to a development project because they know the details of the project. As Stacey knows, we are also often accompanied by our client (and in many cases it is not a private developer but a school or church employee) for the same reason - the client (the university president, the minister, etc. - most zones require a discretionary permit for private schools and churches) has first hand knowledge of the facts. I would hope that the Ethics Commission staff and the Commissioners consider if the exemption should be broad enough to cover not just development professionals but also others accompanied by a registered lobbyist.

3) With regard to who should fall within the definition of "City Official." 500 plus 550 is far too many. Limit who is a City Official to the elected officials, their staff, Directors and Deputy Directors (and other similar posts). This limitation will assist in the enforcement of the ordinance as well as capture the "lobbying" that is of the greatest concern to the public.

4) The reason for my support of an exemption when accompanied by a registered lobbyist and a limited list of City Officials is my view that the current ordinance is too broad. A quick review of the current list of registered lobbyists shows that only one engineering firm and one planning firm are registered, yet architects, engineers, traffic engineers, planners, biologists, etc. meet daily with Development Services staff to discuss development project related issues. Under the current ordinance, many of the professionals should be registered - that is obviously not happening. An ordinance that requires their registration only if they meet with the Director and Deputy Directors of Development Services (and not accompanied by a registered lobbyist) would capture those people who are definitely meeting to influence a critical staff decision.

Thanks for taking the time to consider my questions and comments.

Again, I apologize for not being at this morning's meeting.

Sincerely,

Rebecca Michael
Wertz McDade Wallace Moot & Brower
945 4th Ave.
San Diego, CA 92101
RMichael@wertzmcdade.com
Tel: (619) 233-1888
Fax: (619) 696-9476

PLEASE NOTE OUR FIRM NAME, EMAIL ADDRESSES AND DOMAIN NAME HAVE CHANGED.

The information contained in this message, and any file(s) transmitted with it, is intended only for the personal and confidential use of the designated recipient(s) named above. This message is a communication from Wertz McDade Wallace Moot & Brower, APC or its agents relating to pending legal matters and, as such, is intended to be privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error, and that any review, dissemination, distribution or copying of this message is strictly prohibited.-----Original Message-----

From: Katherine Hunt [mailto:KHunt@sanidiego.gov]

Sent: Friday, March 17, 2006 4:04 PM

To: Katherine Hunt

Subject: Attached are three documents that have been prepared for discussion at the Ethics Commission's meeti discussion at the Ethics Commission's meeti

Attached are three documents that have been prepared for discussion at the Ethics Commission's meeting of March 20, 2006, on the subject of revising the City's Lobbying Ordinance. These documents are as follows:

Purpose and Intent Language: this document contains staff revisions to the purpose and intent language that has been discussed by members of the Commission and members of the public at recent meetings. The revisions are intended to respond to comments made at the March 9, 2005, meeting.

Exemptions Table: this chart contains a list of lobbying exemptions that exist in the City of San Diego and in other jurisdictions in California. It is identical to the chart created for the March 9, 2006, meeting, with the addition of a staff recommendation for each identified exemption, as well as a new entry on the second page for "Complying with Contract After Execution."

City Position List: this document lists all of the City's unclassified positions. It also contains a list of the City's classified positions that generally are filled by employees who file Statements of Economic Interests, i.e., employees who have some influence on City decision-making. These lists are intended to show the types of officers and employees of the City who lobbyists may seek to communicate with when attempting to influence municipal decisions.

5/11/06

City Of San Diego
Ethics Commission

Dear Commissioners and staff:

We feel that the common interest is best served when we "let the sunshine in."

In the case of lobbyist disclosures with regards to campaign contributions, we feel the sun should be shining where:

- Campaign contributions are made
- Campaign fundraising events occur
- Campaign fundraising solicitations are made
- Charitable contributions are made at the behest of elected office or candidate

We also think it good to know if a lobbyist has worked as a campaign consultant.

In short, we think starting with the requirements in place in the city of Los Angeles would be a good first step in your discussion.

Thank you.

Simon Mayeski
California Common Cause
Ethics Commission representative.

WERTZ MCDADE WALLACE MOOT BROWER

LAWYERS

A PROFESSIONAL CORPORATION

Lynn M. Beekman	J. Michael McDade	Of Counsel
Sandra J. Brower	Kathleen J. McKee	
Julie A. Delahunt	John S. Moot	Rebecca Michael
Richard T. Forsyth	Elaine A. Rogers	Evan S. Ravich
Jenny K. Goodman	John H. Stephens	
Bonny Hsu	Robert A. Vacchi	
Sarah H. Lanham	Bruce R. Wallace	Administrator
Joseph C. Lavelle	John Ross Wertz	Jeri O'Keefe
Larry L. Marshall	Pamela Lawton Wilson	

July 13, 2006

VIA MESSENGER

Ms. Stacey Fulhorst
Executive Director
San Diego Ethics Commission
1010 Second Avenue, No. 1530
San Diego, CA 92101

Re: Prohibition on Lobbyist Involvement in Campaign Fundraising

Dear Ms. Fulhorst:

These comments present the position of the San Diego-Imperial Counties Labor Council "Labor Council," an umbrella organization of approximately 100,000 members, many of whom live and work in the City of San Diego.

The Labor Council is gravely concerned that the proposed ordinance under consideration at your July 13, 2006 meeting would unconstitutionally restrict its members' First Amendment rights. The rights that would be violated by the proposed law include the right to petition elected representatives and to make political speech, including speech in the form of lawful independent expenditures and campaign contributions. Furthermore, we agree with the conclusion stated in the July 13, 2006 letter from the Public Affairs Working Group, that the current language is contrary to state law pertaining to "member communications," a crucial form of communication for our organization.

In a June 8, 2006 legal memo, your general counsel Christe C. McGuire advised you that lobbying and contribution disclosure requirements will generally be found legally valid, but that a law that prohibits lobbyists from engaging in campaign fundraising or making even small contributions, is much more suspect. After reviewing the proposed ordinance and pertinent legal authorities, it is our conclusion that the law would be stricken on multiple grounds.

We also question the basic premise of the ordinance, which is that "it is necessary to eliminate the appearance of improper influence that is created when elected officials are lobbied

945 Fourth Avenue, San Diego, California 92101

Telephone 619-233-1888 • Facsimile 619-696-9476 • www.wertzmcdade.com

Stacey Fulhorst
July 13, 2006
Page 2

by individuals who have participated in fundraising for the officials' campaigns."¹ Taken to its logical conclusion, the premise that an appearance of corruption is created when donors petition their elected officials for action, amounts to a contention that our system of political contributions is inherently corrupting. The ultimate conclusion then must be that all campaign contributions should be illegal. While this view may be popular, it has repeatedly been found to constitute an unconstitutional restriction on political speech.

We join in the concern expressed by the Public Affairs Working Group regarding the legal frailties of the proposed ordinance. The McGuire memo acknowledges any proposal to restrict contributions by lobbyists will be subject to strict scrutiny and found invalid unless it is narrowly tailored to serve a compelling governmental interest. The proposed language is not narrowly tailored because the prohibition includes not only a lobbyist, but also the lobbyist's clients. A ban that encompasses a lobbyist client's directors and officers is not narrowly tailored to accomplish the ordinance's goal.

Because we question the basic premise of the proposed law we ask that you conduct thorough research to develop evidence as to the accuracy or inaccuracy of the presumption that political contributions create an appearance of undue influence. The record indicates the Commissioners first asked staff to investigate this issue at the June 8, 2006 meeting. Only a month later, a proposed ordinance is before you for consideration. This is a rapid progression compared to the lengthy and thorough deliberations the Commission has conducted into other proposed revisions to its ordinance. Much more fact gathering is required to determine if the targeted problem even exists.

Sincerely,



Pamela Lawton Wilson

¹ Memorandum from Stacey Fulhorst to Commissioners dated June 22, 2006, p. 1.

THE SUTTON LAW FIRM

150 Post Street, Suite 405 San Francisco, CA 94108
Tel: 415/732-7700 Fax: 415/732-7701 www.campaignlawyers.com

July 13, 2006

VIA E-MAIL ONLY

Ms. Stacey Fulhorst
San Diego Ethics Commission
1010 Second Ave., #1530
San Diego, CA 92101

RE: Lobbyist Fundraising Prohibition

Dear Stacey:

On behalf of the San Diego Public Affairs Working Group, we submit these comments regarding the proposal to prohibit lobbyists from lobbying City officials for whom they have conducted fundraising activities. We would appreciate you distributing this letter to all of the Commissioners before tonight's meeting.

In short, the Working Group's position is that the proposal raises a host of constitutional concerns, would result in a number of unintended consequences, would be difficult to enforce, and is a "solution in search of a problem."

Legal and Policy Problems with Proposal

1. Questionable legality.

The proposal implicates several First Amendment rights: the right to petition the government for the redress of grievances, the right of association, and free speech. Despite staff's attempt to portray the proposal as something other than a direct ban on fundraising, this is a distinction without difference. Because the proposal forces a lobbyist to choose between one of two constitutionally-protected activities - either participating in a campaign or lobbying - the proposal presents a Hobson's choice and, therefore, must be treated as a prohibition.¹ As a prohibition, and as staff acknowledges in its June 22, 2006, the proposal

¹In other contexts, courts have determined that requiring that an individual surrender one constitutional right in order to exercise another right is an invalid interference with both rights. (See e.g., Simmons v. United States (1968) 390 U.S. 377, 394 [courts finds it "intolerable that one constitutional right should have to be surrendered in order to assert

will be subject to strict scrutiny and is invalid unless it is narrowly tailored to serve a compelling governmental interest.

The compelling governmental interest cited in staff's memorandum regarding the proposal is "eliminating the appearance of improper influence that is created when elected officials are lobbied by individuals who have conducted fundraising activities on behalf of the official." Even assuming that the Commission finds that this is a compelling government interest that would justify a prohibition on the exercise of a lobbyist's First Amendment rights, the proposal is not narrowly tailored to serve this interest.

A. Overbroad because of \$1 registration threshold. In numerous cases analyzing prohibitions on the activities of lobbyists, courts have looked to a particular statute's definition of "lobbyist" in order to determine whether the prohibition is narrowly tailored to reach only those individuals who are more likely to "threaten the integrity of the political process." (See e.g., Barker vs. State of Wisconsin Ethics Board (1993) 841 F. Supp. 255 [prohibition on lobbyist volunteering for political campaigns invalid partially due to fact that individual who has fewer than one lobbying contact per month qualifies as a lobbyist]; Institute for Governmental Advocates v. FPCC (2001) 164 F. Supp. 2d 1183 [court upholds ban on contributions from lobbyists partially due to fact that threshold for qualifying as a lobbyist was higher than earlier threshold].) In light of the Commission's intention to set a \$1 threshold for lobbyist registration, the proposal as drafted would significantly impact the associational rights of large number of San Diegans without regard to how much time the individual actually spends lobbying. For example, an attorney who sends an e-mail to family and friends to solicit contributions for her neighbor who is running for City Council will be prohibited from making a single telephone call or sending a single email to the elected official on behalf of a client. Such over-reaching is unconstitutional.

The proposal also bumps up against several other legal issues:

B. Impermissibly prohibits lobbying firms and trade associations from communicating with their employees or members. The proposal violates state law by prohibiting organizations from communicating with their employees, shareholders, or members regarding candidates and ballot measure campaigns. The Political Reform Act explicitly and categorically exempts "member communications" (i.e., communications from an organization to its employees, members, or shareholders which urge them to support or oppose candidates or ballot measures) from regulation by state and local campaign laws. (Cal. Govt. Code section 85312.) Moreover, the Political Reform Act explicitly prohibits local jurisdictions from enacting any "limitation or prohibition" that conflicts with this members communication exemption. (Cal. Govt. Code section 85703.) As drafted, the

another."].)

proposal would silence an employer's communications with its employees, and an organization's communications with its members, regarding City candidates. For example, a nonprofit which is working with City officials to pass an ordinance would be prohibited from sending a letter to its members urging them to vote for a candidate who supports the proposal. Because of this state law, the Commission may not stop lobbyists from asking their employees or members to contribute to a City candidate.

C. Illegally interferes with relationship between lobbyists and their clients. The proposed restriction unconstitutionally interferes with the relationship between a lobbyist and his/her clients. In Institute for Governmental Advocates, the court stopped the Fair Political Practices Commission from prohibiting lobbyists from providing campaign recommendations to their clients. (Institute for Governmental Advocates v. Younger (1977) 70 Cal. App. 3d 878.) In doing so, the court stated that "[w]e can see no valid reason, consistent with free speech, to prevent a lobbyist from telling his employer of the lobbyist's opinion as to an officeholder or candidate." (*Id.* at p. 883.) Because of the legal protections placed on communications between a lobbyist and his/her clients, the Commission may not stop lobbyists from raising campaign funds from or otherwise communicating with their clients.

D. Illegally interferes with lobbyists' volunteer activities. The proposal also impermissibly interferes with the rights of lobbyists to volunteer for political campaigns. In Barker, a federal court stopped a state agency from prohibiting lobbyists from volunteering their personal services to a campaign. In doing so, the court stated that lobbyists are not more inclined to interfere with the integrity of the political process than other individuals (e.g., environmental activists, business executives, lawyers, etc.) "who are motivated by their various concerns to volunteer to work in political campaigns." (Barker, *supra* at p. 260.) Walking precincts, making telephone calls – and hosting fundraising events – are legitimate ways in which all individuals, regardless of their profession, may exercise their First Amendment rights. The Commission can not interfere with the basic First Amendment right to volunteer for a political campaign.

2. Unintended consequences.

As drafted, we believe that the proposal would have a number of unintended, negative consequences:

A. Discouraging individuals from registering as lobbyists. Throughout this process, the Commission has emphasized the need to simplify and streamline the lobbyist reporting and registration requirements, for several reasons. One concern is that complicated and confusing rules discourage people from registering. Certainly, putting a registered lobbyist at peril of fines or criminal penalties if they send an e-mail to their clients, family, friends and colleagues, or if they invite their neighbors to a "meet and greet"

with a City candidate at their house, will only increase the incentive to flaunt the registration requirement.

B. Increasing amount of time candidates will spend fundraising. Because campaigns cost money and because San Diego's contribution limits are so low, individuals who wish to run for public office here are under great pressure to spend as much time as possible raising funds. By limiting the ability of interested individuals to help candidates raise funds – individuals who may come under this prohibition simply because at some time in the future they may have to contact one City official on behalf of one client – the proposal will have the unintended consequence of putting even more pressure on candidates to spend even more time fundraising, leaving even less time to talk to voters about public policy issues.

C. Providing advantage to wealthy self-funded candidates. Similarly, by making it harder for candidates to raise money, the proposal will give a further advantage to wealthy candidates who can self-finance their own campaigns.

3. Difficulty of enforcement.

Even though staff has expressed on numerous occasions its wish to have a law which can be enforced, in our opinion, it would be difficult if not impossible for staff to enforce the proposed fundraising and lobbying ban. Commission staff will have no way of knowing whether a particular lobbyist has conducted fundraising activities for a particular elected official or whether a particular lobbyist has lobbied the same official. Although the proposal may prevent lobbyists from hosting fundraising events or widely soliciting contributions for a particular candidate, other less conspicuous fundraising solicitations (e.g., telephone calls) would be impossible for the Commission staff to police. Rather than investigating and bringing enforcement actions regarding serious campaign and ethics violations, Commission staff will have to spend their time counting how many names are on an invitation list or searching public records for a single contact between a lobbyist who hosted a fundraising event and the elected official who benefitted from the event.

4. "Solution in search of a problem."

Rather than relying on selected observations from audits, or one scandal involving an unregistered lobbyist, we recommend that the Commission instruct staff to conduct a more thorough analysis of City campaign reports to determine whether lobbyists and their clients – or any other special interest group² – are really such a significant source of

²We question why the Commission is not considering prohibiting labor unions, neighborhood associations, nonprofits, businesses, or other interest groups which have

contributions to City candidates, before the Commission moves forward with any type of fundraising prohibition. Courts have repeatedly struck down campaign finance laws because of a lack of evidence justifying the restriction on First Amendment rights. (See most recently Randall v. Sorrell (2006) 2006 WL 1725360 (U.S.) [Supreme Court cites lack of evidence justifying a restrictive contribution limit as grounds for striking down Vermont's \$250 contribution limit].) The Los Angeles City Ethics Commission conducted such a study in 2004, finding that less than six percent of all contributions were given by or through lobbying entities; this low percentage of contributions from lobbying entities was one factor in the City Council's eventual rejection of a lobbyist fundraising ban in Los Angeles. Before imposing such a draconian prohibition, which ignores several contrary court rulings, we believe that the Commission should do a similar study of fundraising in San Diego.

5. Proposals are attack on the integrity of elected officials.

Although couched as a restriction on lobbyists, the proposal in essence says that elected officials in San Diego are so unethical that they must be "protected" from lobbyists who have conducted fundraising activities on their behalf. In effect, the proposal paints a picture of Councilpersons changing their votes simply because a particular lobbyist has sent an e-mail to their clients or friends, or hosted a fundraising event at his or her house. We believe that elected officials are much more honorable.

Alternative

In addition to undertaking a comprehensive study of fundraising activities of all interest groups in San Diego, the Working Group recommends that the Commission focus on "letting the sun shine" on the fundraising activities of lobbyists, rather than supporting a proposal which significantly interferes with the First Amendment rights of lobbyists, their clients, and candidates for public office, which ignores several court cases which have invalidated restrictions on campaign activities of lobbyists, which contradicts state law, and which ignores the practical realities of running for office in a city the size of San Diego. As we have discussed at earlier Commission meetings, we recommend that the Commission:

- Require lobbyists to disclose the "bundling" or delivery of campaign contributions on their lobbyist reports (as required in Los Angeles and San Francisco);
- Require lobbyists to disclose their campaign contributions on their lobbyist reports (as required in all other jurisdictions); and

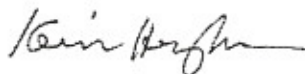
influence on City decision-makers from fundraising for City candidates.

Ms. Stacey Fulhorst
July 13, 2006
Page 6

- Require lobbyists to file copies of fundraising solicitations distributed to over 50 persons or more (as required in Los Angeles).

We look forward to working with the Commissioners and staff on this proposal.

Sincerely,



Kevin Heneghan

KRH/lc
#1193.01

8/10/06

City Of San Diego
Ethics Commission

Dear Commissioners and staff:

Thanks for the thorough and painstaking work you have done in updating Division 40, the Municipal Lobbying ordinance to its current state. This is great work. We believe the Commission and its staff has been painstaking and diligent in this task and has shown itself to be open to public input in a meaningful way. If this revision can survive massive alteration on its way to becoming a modified ordinance, we will have done a good job in exposing lobbying to a great deal more sunlight.

Perhaps next time we can find the way to more completely separate campaign contributions and lobbyists, or maybe it will be up to the Clean Elections movement to provide voter-financed elections and give candidates the opportunity to refuse money from all interests, "special" and otherwise.

We shall see.

At this time we find just two sections in Division 40 that need further review and modification.

- (1) We think the qualifying activities for Business Lobbyist in Definitions (page 2) allow for too much lobbying activity before the threshold is reached. We believe it is quite possible that many businesses could spend substantial amounts of time and enjoy many opportunities to influence legislation over a year's time and still stay below the radar of registration. This is especially true if, as described on page 10, in Contacts, (c) a lobbyist can send "*substantially similar letters, e-mail messages, or facsimile communications regarding one or more municipal decisions to one or more City officials*" and that is considered to be 1 contact per decision. A lobbyist can therefore contact every member of the City Council with a letter, email or fax on four separate decisions in a thirty day period and still stay "off the radar." **We would recommend adding a "ten contacts in a calendar year" threshold.** The active owner of a "mom-and-pop" store who loves to call her council person weekly stays out of reporting as long as her business has no more than 12 employees.
- (2) On page 5, "*Hosting a campaign*": We would drop the last sentence that exempts any event that has a total cost of \$500 or less; we don't think the cost of an event is all that important. If I as Joe Lobbyist call up 10 of my – you choose: labor, developer, political party or close personal – associates and invite them to my office to talk about Patty Politician and how we should each support her with a substantial contribution, I would be exempt from reporting that because I kept the cost under \$500. The public would not be best served by this kind of reporting exemption.

Thank you.

Simon Mayeski
California Common Cause
Ethics Commission Rep.

*Submitted 8/10/06
mel Shapiro*

The widespread violation of the law that requires filing of statement of economic interest deserves to be on your agenda.

Last February, Ms Fulhorst sent a memo to all city depts except City Atty, but, including the mayor and city council, advising that they should send the names of their consultants to the City Clerk, so that the Clerk could notify them to file Form 700.

CCDC seems to have complied, admitting that about 100 consultants have not filed for years.

But the mayor, several councilmembers and the City Atty have by and large ignored the Ethics Commission notice. The council should be made aware that consultants include lawyers. The memo also suggested that the city depts get advice from the City Atty about consultants filing duties. We cannot depend on the City Atty on this, since his dept is a major violator by not notifying the Clerk of the names of his outside counsel.

I know that you have received many referrals of non-filing violations from the City Clerk. I estimate about 80. plus 25 from me. My 25 date back to last year. Most are open investigations. I found 7 prosecutions by the Commission. and

17 dismissals- the public should know why these 17 were dismissed even though they were legally required to file.

I believe the mayor, the council and certainly the City Atty know that their lawyers/consultants are breaking the law with the cooperation of the officials that hired them.. I call it civil disobedience. You should not let them get away with it. After 6 months, we need a status report.